

Module 1 Questions**Emergency Exemption Statutes: Questions For Your State.**

Check your state emergency exemption statute and determine what the law requires in your state to qualify for the emergency exemption:

1. What warning devices must be activated to claim the emergency exemption?
 - a. Lights and siren both in operation at all times?
 - b. Lights only but not siren, or siren only but not lights?
 - c. Neither in operation for exceeding speed limits, but some activated for claiming right-of-way?
 - d. Must emergency equipment meet certain standards - i.e., siren must be audible at 1000 feet - or of a type approved by a governmental authority?
2. Exactly which traffic laws are covered by your emergency exemption statute?
 - a. Speed limits and right-of-way laws?
 - b. The above plus parking and passing restrictions?
 - c. The above plus exemption from one-way streets and driving to left of center line?
3. What is the language used to impose a duty of due care at intersections and exceeding the speed limit? Often the restrictive "safety" language of an exemption statute takes away much of the authority to use the exemption - "you may cross against a signal, but only if that can be done with safety to others."
4. Somewhere in the exemption statute will appear language mandating "due regard for the safety of others." What does that mean in your state?

Tort Immunity Statutes: Questions That Need Answers For Your State

Governmental tort immunity means a negligent law enforcement driver will not be required to pay damages to persons injured by the negligent driving. Immunity from tort liability for government employees assumes the employee has committed a negligent act that would subject a private citizen to tort liability. The injured citizen is simply denied the legal right to maintain the negligence lawsuit against a governmental entity and its employees.

Some states have abolished the doctrine of governmental immunity for all tort claims, making governmental employees equal to private citizens in their responsibility for negligent traffic crashes. A few states have kept governmental immunity almost wholly intact, for the entire range of governmental activities. Most states have modified governmental immunity so certain kinds of activity are not exempt but other activities are exempt.

Liability for negligent driving by governmental employees, which includes law enforcement officers, often is removed from governmental immunity statutes. In many states, officers who are negligent are subject to lawsuits and not exempt by governmental immunity. In other states, officers are immune from simple negligence, but not gross negligence or "willful and wanton" negligence. In some states, negligence during the course of an arrest is protected by an immunity statute while other law enforcement activity is not immune.

Notice that governmental immunity laws exempting officers from a lawsuit are not the same as emergency exemption statutes, giving officers a legal right to ignore certain traffic laws. An officer who exceeds the speed limit in a safe manner that complies with the emergency exemption statute is not negligent in the first place. State immunity statutes are designed to protect the guilty government employee, not the injured citizen.

Some states have unusual governmental immunity statutes just for law enforcement driving. In California, driving immunity for individual officers is given by California statutory law if the employing agency has adopted an adequate written policy restricting emergency driving. Knowledge of your state tort immunity statute is essential for teaching new officers about their individual liability for civil damages.

Agency Policy: Questions That Need Answers For Your State

Written policy restricts emergency driving in almost every agency. Of particular importance is use of warning lights and sirens, maximum speeds, and special rules for crossing intersections against prevailing signals. Rookie officers may be under special restrictions, and pursuits usually are limited in agency policy.

Violations of agency policy have important legal consequences. Safety provisions in agency policy - i.e., don't exceed 10 mph over the posted limit going to a call - can be admitted as evidence in court to prove negligence. Thus, a safety policy violation can be used to prove an officer was guilty of criminal negligence in a fatal accident, resulting in a criminal conviction. Violations of agency policy also can lead to loss of employment. A fundamental responsibility of administrators and supervisors is ensuring all officers know and understand agency written policy.

If all students in a training class are employees of the same agency, their written policy should be used as part of instructional material. Students should be tested on their knowledge of agency policy and its important restrictions.

Decision-Making As The Best Protection Against Liability.

For all law enforcement activities, poor decision-making is the primary cause of civil liability. Liability for improper use of a pistol seldom comes from a lack of reasonable accuracy. Liability comes from shooting when use of deadly force is not authorized by the facts and circumstances. It is not a lack of skill but rather a lack of judgment that results in liability.

The same is true for emergency vehicle operation. Liability is found less in the ability to control a law enforcement vehicle at high speeds and more in failing to recognize great danger and react in time to reduce the risk of harm. It is less the ability to drive at high speeds and more the failure to slow down that causes tragic accidents. Good decisions protect an officer more than good skills.

A sad reality in emergency vehicle operation is the willingness of many officers to ignore obvious safety rules during an emergency run. The emotions generated by a chase are powerful. Letting someone get away is hard to do for many officers. Driving to the scene of an emergency call for help almost always results in extremely dangerous driving.

And the danger is not just to an innocent bystander, but also to the officer driving the car. Suppose every time an officer shot his handgun that an equal chance existed for hitting not only the criminal suspect but also of hitting an innocent bystander and hitting the officer who fired the gun - that is the danger in emergency vehicle operation.

A good instructor will stress driving dangers that can be easily identified in that locality. Major intersections controlled by signals are prime locations for traffic crashes. Hilly roads, narrow roads, residential areas, schools, and hospitals require special care. High speeds may be relatively safe on an interstate but entirely too fast for a commercial district.

Students should examine their own locality and identify its danger points for law enforcement driving. Students must know the safety rules and understand the importance of compliance and they should realize that even the most skillful driver cannot ignore safety rules and obvious dangers. Students and officers who demonstrate an inability to follow the rules of safe driving should be encouraged to leave the law enforcement profession.

Doing Legal Research

Every state has a law school with a reference librarian. Instructors should call and explain their need for court cases and any new statutes in this area. That may be quicker and easier than any other means of verifying the currency of legal information in the appropriate state(s).

SUGGESTED INSTRUCTIONAL METHODOLOGY

LECTURE WITH VIDEO

Utilize reenacted pursuits to present legal principles and involve students in discussion of relevant issues.

LECTURE AND CLASS DISCUSSION

Utilize case summaries to present legal principles and involve students in discussion of relevant issues.

SMALL GROUPS WITH CASE STUDIES

In groups of 3-6, present each group with the cases provided above and additional fact situations. Involve small groups in discussion of cases and develop group questions for the instructor to address in subsequent lectures.

SUGGESTIONS FOR CLASSROOM INSTRUCTORS

Statute law in two areas varies considerably from one state to the next. Those areas are emergency exemption statutes and tort immunity statutes. A third variable is agency policy, different for any given agency within a particular state. All three of these legal variables must be confronted by the classroom instructor. This publication is not a comprehensive review of the law of each state. Even if it were, classroom instructors must assume the law changes over time with new statutes and new court decisions coming into being on a regular basis.

With slides of various environmental factors, have students identify how the factors create a situation which is more demanding of the driver's skills and attention.

RESOURCES AND AIDS

1. Relevant state statutes
2. Agency policies

SUGGESTED EVALUATION METHODOLOGY**STUDENTS**

Written or verbal response to questions regarding legal principles

COURSE

A review of legal proceedings against the agency